IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-211

NATIONAL LABOR RELATIONS BOARD,
Respondent,

vs.

EDWARD J. ALEXANDER, d/b/a STRAND THEATER, K.I.M.Y.B.A. CORP., LeROY WENDLING,
~~*Appellant.*~~ Petitioners

Petition to
ON ~~APPEAL FROM~~ THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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NATIONAL LABOR RELATIONS BOARD,
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JURISDICTIONAL STATEMENT

Petitioners
~~Appellant~~ appeals from the Judgment and Order of the United States Court of Appeals Eighth Circuit, entered on May 9, 1979, affirming and enforcing the Decision of the National Labor Relations Board entered on May 8, 1978 adopting and affirming the Recommendations of the Administrative Law Judge entered on February 7, 1978. ~~Appellant~~ submits this statement to show that the Supreme Court of the United States should grant a Writ of Certiorari to review the decision of the United States Court of Appeals.

Petitioners

OPINION BELOW

The Recommendations and Memorandum of the Administrative Law Judge, Michael O. Miller, entered on February 7, 1978 finding jurisdiction of the National Labor Relations Board over Appellant based on secondary evidence submitted because Appellant plead the Fifth Amendment to jurisdictional questions is not reported and is set forth in the Appendix, *infra,* Appendix 1A-11A. 15A The decision and Order of the National Labor Relations Board entered on May 8, 1978 affirming and adopting the Administrative Law Judge's decision is reported at 235 N.L.R.B. No. 210 and is set forth, *infra,* at pages A 12-A13. 16-A17 The Order of the United States Court of Appeals upholding the decision of the National Labor Relations Board entered on May 9, 1979 is reported at 495 F.2d 454 (1979) and is set forth in the Appendix at A-14-A.22.

17-A.25

JURISDICTION

The jurisdiction of the Supreme Court to review the decision of the United States Court of Appeals affirming the decision of the National Labor Relations Board is conferred by 28 U.S.C. §2350 and 1254(1). The following decisions sustain the jurisdiction of this Court to issue a Writ of Certiorari to review the Judgment of the United States Court of Appeals in this case: *Wirtz v Hotel, Motel and Club Emp. Union, Local 6,* N.Y. 1968, 88 S. Ct. 1743, 391 U.S. 492, 20 L.Ed. 2d 763; N.L.R.B. v. *Truitt Mfg. Co.,* 1956, 76 S.Ct. 753, 351 U.S. 149, 100 L.Ed. 1027; and *Office Emp. Intern. Union Local No. 11, A.F.L.-C.I.O. v. N.L.R.B.* App. D.C. 1957, 77 S.Ct. 799, 353 U.S. 313, 1 L.Ed. 2d 846.

STATUTES INVOLVED

29 C.F.R. §102.31(c) provides as follows:

> "With the approval of the Attorney General of the United States, the Board may issue an order requiring any individual to give testimony or provide other information at any proceeding before the Board if, in the judgment of the Board, (1) the testimony or other information from such individual may be necessary to the public interest, and (2) such individual has refused or is likely to refuse to testify or provide other information on the basis of their privilege against self-incrimination. . . ."

QUESTIONS PRESENTED

1. May the National Labor Relations Board disregard its self-imposed jurisdictional standards solely because an employer asserts his Fifth Amendment privilege in an N.L.R.B. proceeding?

2. May the N.L.R.B. rely upon secondary evidence to establish statutory jurisdiction over an employer in an N.L.R.B. proceeding when the N.L.R.B. refuses to follow the procedures outlined in 29 C.F.R. §102.31 which were designed to protect an individual who properly asserts their Fifth Amendment privilege before the N.L.R.B.

STATEMENT OF THE CASE

This case involves a complaint before the National Labor Relations Board brought on behalf of the projectionists' union at the Strand Theater in Duluth, Minnesota. Appellant filed an answer asserting his Fifth Amendment privilege as to the jurisdictional questions due to the fact

that they dealt with the interstate nature of his business and that, being an X-rated theater, he might be subjected to a federal obscenity prosecution if he answered the jurisdictional questions posed by the National Labor Relations Board. 18 U.S.C. §1462 and 1465.

A hearing was held before an Administrative Law Judge who suggested that the N.L.R.B. might follow the procedures outlined in 29 C.F.R. §102.31(1).

The N.L.R.B. chose to ignore the procedures provided under 29 C.F.R. §102.31(1) and proceeded to present secondary evidence to establish statutory jurisdiction in the N.L.R.B.

The N.L.R.B. was not able to establish through secondary evidence that the business met the self-imposed jurisdictional guidelines of an annual volume of business exceeding $500,000. However, the Board did establish that Appellant did a few thousand dollars business affecting interstate commerce per year and on that basis the Administrative Law Judge found that the Board did establish its jurisdictional prerequisites and went on to decide the case on the merits.

The decision of the Administrative Law Judge, Michael O. Miller, was adopted by the National Labor Relations Board in a decision entered on May 8, 1978.

Appellant resisted the enforcement of the Order of the National Labor Relations Board on the grounds that the jurisdictional findings violated his Fifth Amendment privilege. On May 9, 1979, the United States Court of Appeals entered judgment against Appellant upholding the decision of the National Labor Relations Board and its finding of jurisdiction over the Appellant.

This Petition for a Writ of Certiorari is submitted from

the Judgement of the United States Court of Appeals pursuant to the authority of 28 U.S.C. §§2350 and 1254(1).

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I.

THE NATIONAL LABOR RELATIONS BOARD MAY NOT DISREGARD ITS SELF-IMPOSED JURISDICTIONAL STANDARDS SOLELY BECAUSE THE EMPLOYER ASSERTS HIS FIFTH AMENDMENT PRIVILEGE IN AN N.L.R.B. PROCEEDING.

The National Labor Relations Board has long relied on self-imposed jurisdictional standards as an administrative aid, so that in light of the necessary limitations on its resources and personnel, it may concentrate on cases having the greatest potential for interfering with the free flow of commerce. The Board's discretionary jurisdictional standard for motion picture theaters is the same as that for other retail enterprises, requiring an annual gross volume of business of at least $500,000. *Motion Picture Machine Operators Local Union 330, AFL-CIO v. Western Hills Theaters, Inc.*, 204 N.L.R.B. 1057 (1973).

In the present case, it was uncontested that there was not sufficient evidence to establish that the business in question met the self-imposed jurisdiction guidelines described above. However, it was the contention of the N.L.R.B. that because the Appellant asserted his Fifth Amendment privilege that the N.L.R.B. could disregard its self-imposed jurisdictional guidelines. This finding was upheld by the United States Court of Appeals and forms the basis for the present application for a Writ of Certiorari. The Writ of Certiorari should be granted in this case

because the rule of law enunciated by the Eighth Circuit dangerously errodes the protections of the Fifth Amendment and conflicts with this Court's decisions in a number of related cases. *Lefkowitz v. Cunningham*, 431 U.S. 801, 53 L.Ed. 2d 1, 97 S.Ct. 2123 (1977); *Lefkowitz v. Turley*, 414 U.S. 70, 38 L.Ed. 2d 274, 94 S.Ct. 312 (1973); *Accord Sanitation Men v. Sanitation Commissioner*, 392 U.S. 280, 20 L.Ed. 2d 1089, 88 S.Ct. 1916 (1968); *Gardner v. Broderick*, 395 U.S. 273, 20 L.Ed. 2d 1082, 88 S.Ct. 1913 (1968); *Garrity v. New Jersey*, 385 U.S. 493, 17 L.Ed. 2d 6562, 87 S.Ct. 646 (1967).

II.

THE NATIONAL LABOR RELATIONS BOARD MAY NOT RELY UPON SECONDARY EVIDENCE TO ESTABLISH STATUTORY JURISDICTION OVER AN EMPLOYER IN AN N.L.R.B. PROCEEDING WHEN THE N.L.R.B. REFUSES TO FOLLOW THE PROCEDURES OUTLINED IN 29 C.F.R. §102.31(1) WHICH WERE DESIGNED TO PROTECT AN INDIVIDUAL WHO PROPERLY ASSERTS HIS FIFTH AMENDMENT PRIVILEGE BEFORE THE NATIONAL LABOR RELATIONS BOARD.

The errosion to the Fifth Amendment engendered by the present proceedings and the decision of the United States Court of Appeals is exacerbated by the fact that there is a procedure available for dealing with persons who assert their Fifth Amendment privilege before administrative tribunals which was not followed by the National Labor Relations Board in the present case. 29 C.F.R. § 102.31(c) sets forth a procedure which insures that an administrative body will obtain both the truth and

evidence it needs while, at the same time, protecting the constitutional rights of parties appearing before the administrative tribunal. 29 C.F.R. §102.31 provides in pertinent part:

> "(c) With the approval of the Attorney General of the United States the Board may issue an Order requiring any individual to give testimony or provide other information at any proceeding before the Board if, in the judgment of the Board, (1) the testimony or other information from such individual may be necessary to the public interest, and (2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination."

This procedure clearly sets forth a reasonable compromise between the need of the National Labor Relations Board for information and the right of employers or other parties to have their Fifth Amendment privilege fully protected when they provide information to the National Labor Relations Board.

The National Labor Relations Board in the present case chose not to follow the procedure outlined in 29 C.F.R. §102.31 (c), rather, it placed the Appellant in the same category as a party who simply thumbs his nose at the N.L.R.B. It relied upon secondary evidence and the much less rigorous statutory jurisdictional standard first followed in *Tropicana Products, Inc.* 122 N.L.R.B. 121 (1958).

Since it was not seriously contested that the Appellant's theater in Duluth, Minnesota did not meet the $500,000 jurisdictional standard imposed by the National Labor Relations Board, *Motion Picture Machine Operators Local*

Union 330, AFL-CIO (Western Hills Theaters, Inc., 204 N.L.R.B. 1057 (1973)), it is obvious that "but for" the assertion of his Fifth Amendment privilege, the N.L.R.B. could not have accepted jurisdiction of the case or imposed its sanctions upon the Appellant.

CONCLUSION

For the reasons set forth above, this Court should grant a Writ of Certiorari so that the decision of the United States Court of Appeals may be fully reviewed.

Dated: July 30, 1979.

Respectfully submitted,

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APPENDIX

United States of America
Before the National Labor Relations Board
Division of Judges

Edward J. Alexander d/b/a Strand Theatre, K.I.M.Y.B.A. Corp., LeRoy Wendling,

Respondent,

and

Duluth Motion Picture Operators Local 509, International Alliance of Theatrical State Employees,

Charging Party.

Decision

Case No. 18-CA-5432

Charles J. Frisch, Esq., of Minneapolis, MN, for the General Counsel.

Benjamins S. Houge, Esq., of Minneapolis, MN, for the Respondent.

William D. Watters, Esq. (Halvorson, Watters, Bye & Downs), of Duluth, MN, for the Charging Party.

Statement of the Case

MICHAEL O. MILLER, Administrative Law Judge: Upon a charge filed on July 7, 1977, by Local 509, Duluth Motion Picture Operators Local 509, International Alliance of Theatrical Stage Employees (herein the Union),

a complaint was issued on August 31, 1977 and a hearing was held in Duluth, Minnesota on October 26, 1977.

At issue was whether Edward J. Alexander d/b/a Strand Theatre, K.I.M.Y.B.A. Corp., Leroy Wendling, herein Respondent, engaged in surface bargaining and unlawfully withdrew recognition from the Union in violation of Section 8(a)(1) and 8(a)(5) of the Act and violated Section 8(a)(1) and (3) of the Act by discharging or locking out certain employees.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally. Briefs, which have been carefully considered, were filed by both parties.

Upon the entire record, I make the following:

Findings of Fact

I. The Business of Respondent and the Union's Labor Organization Status-Preliminary Conclusion of Law

The Respondent is, and has been, engaged in the operation of motion picture theatres in the State of Minnesota. Until mid-August, 1977, it operated a motion picture theatre in Duluth, Minnesota under the trade name of Strand Theatre and K.I.M.Y.B.A. Corp., the only facility involved herein.

Respondent refused to either admit or deny the complaint's jurisdictional allegations, asserting its privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution. On the same basis, Edward J. Alexander refused to comply with a *subpeona duces tecum* served upon him by General Counsel and re-

fused to testify.[1] General Counsel contended that a plea of Fifth Amendment privilege was equivalent to a failure to admit or deny which, under the Board's rules, is treated as an admission.[2] In view of the constitutional sanctity of the Fifth Amendment privilege, this position is untenable. If a plea of privilege were deemed an admission, the purpose of the plea would be frustrated and the protection of the Fifth Amendment rendered nugatory.

Secondary evidence of the Board's statutory or legal jurisdiction was offered by General Counsel, who maintained that such evidence provided sufficient basis for the assertion of jurisdiction under the foregoing circumstances, notwithstanding the absence of evidence that Respondent satisfied the Board's discretionary jurisdictional standard.[3] General Counsel relies, for this contention upon *Tropicana Products, Inc.*, 122 NLRB 121 (1958) and cases decided thereunder. This contention is well founded.

---

[1]Respondent theatre features X-rated films and Respondent sought to avoid giving any testimony which might be used in a chain of evidence in prosecutions potentially arising from the showing of such films.

No order requiring Alexander to testify, pursuant to NLRB Rules and Regulations, Section 102.31(c), was requested. That section provides, *inter alia:*

> With the approval of the Attorney General of the United States, the Board may issue an order requiring any individual to give testimony or provide other information at any proceeding before the Board if, in the judgment of the Board, (1) the testimony or other information from such individual may be necessary to the public interest, and (2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination. . . .

[2]NLRB Rules and Regulations, Section 102.20, states in part:

> . . . All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

[3]The Board's discretionary jurisdiction standard for motion picture theatres requires an annual gross volume of business of at least $500,000. See *Motion Picture Machine Operators Local Union 330, AFL-CIO (Western Hills Theatres, Inc.)*, 204 NLRB 1057 (1973).

In *Tropicana,* a representation case, the employer declined to appear and give testimony at a hearing of which he had been duly notified. Secondary evidence, establishing involvement in interstate commerce but failing to show satisfaction of the Board's jurisdictional standard, was received. The Board asserted jurisdiction, stating:

> The Board has determined that it best effectuates the policies of the Act, and promotes the prompt handling of cases, to assert jurisdiction in any case in which an employer has refused, upon reasonable request by Board agents, to provide the Board or its agents with information relevant to the Board's jurisdictional determinations where the record developed at a hearing, duly noticed, scheduled and held demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the Employer's operations satisfy the Board's jurisdictional standards.

The *Tropicana* doctrine has subsequently been applied to unfair labor practice proceedings. See for example, *Plant City Welding and Tank Company,* 123 NLRB 1146 (1959) and *Quality Courts Motels, Inc.,* 194 NLRB 1035 (1972).

The record herein establishes that Respondent makes some purchases in interstate commerce. Annually, it has purchased carbons, originating in New York and France, for use in its projectors, valued in excess of $1,100. Similarly, xenon lamps, valued at about $400 and an unspecified number of movie projector reels were purchased. Within the theatre, there are cigarette and candy machines, dispensing products not manufactured in Minnesota. And, as reliable testimony established that no feature length films are produced in Minnesota, it appears that Respondent's principal "product," the films which it shows, originated outside that State. These purchases, while not extensive, are more than *de minimus.* I therefore conclude that the Board has statutory jurisdiction over Respondent. I further conclude that the assertion of jurisdiction will best effectuate the policies of the Act and promote the prompt handling of cases, without regard to whether the record establishes that Respondent's operations satisfy the Board's jurisdictional standards.[4]

Accordingly, I find and conclude that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The complaint alleges, Respondent admits, and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Unfair Labor Practices

A. *The Facts*

Respondent and the Union were parties to a collective-bargaining agreement, for a term of July 1, 1975 until June 30, 1977, covering a unit consisting of all projectionists employed at the Strand Theatre. On April 4, 1977[5] Respondent's attorney notified the Union that it desired to renegotiate the contract upon its termination. It further notified the Union that it would take the position

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[4]In so concluding, I note further that Respondent's counsel, in a letter to the National Labor Relations Board in regard to the charge, tacitly admitted jurisdiction, stating: "the employer will not challenge the jurisdiction of the National Labor Relations Board in this matter."

[5]All dates hereinafter are 1977 unless otherwise specified.

in negotiations that automated equipment, permitting the operation of the projectors from the ticket booth, would be installed upon termination of the contract. Respondent served no Section 8(d) notices upon the Federal Mediation and Conciliation Service or the State mediation agency.[6] The Union served its 8(d) notices on June 16.

Two bargaining meetings were held. No evidence of what transpired at the first meeting was offered. At the second meeting, on June 24, there was some discussion not extensive, in regard to the automated projection equipment which was in the theatre's lobby, awaiting installation. Richard Varani, the Union's International Representative, told Respondent that if movies were going to be shown, such work was within their jurisdiction and the Union would negotiate with the employer in regard to it. Respondent's attorney, Randall Tigue, pointed out the theatre's alleged poor economic position. The Union asked to see Respondent's books and offered to work with the employer if the theatre was losing money. Tigue did not respond. In regard to economics, Respondent offered a

[6]Section 8(d) of the Act defines the obligation to bargain collectively to include the following:

> . . . where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—
>
> * * * *
>
> (3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and
>
> (4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

wage of $4.50 per hour, which was a reduction of 80 cents per hour from the existing rate, plus the elimination of pensions, guaranteed hours and overtime, and the reduction of vacations by 2 weeks. Varani flatly rejected Respondent's offer and sought wage increases that would achieve a $6.00 per hour rate by the end of a 2 year contract. Tigue was unable to give the Union an immediate reply and promised to get back to him shortly.

At no time, in either this or the earlier meeting, did the Union threaten to strike.

On June 27, Tigue wrote Varani, stating:

> I have been instructed by Mr. Wendling of the Strand Theatre in Duluth to advise you that, pursuant to our most discussion [sic] with you and with Local 509 Duluth, the Strand Theatre intends not to renew its contract with Local 509 upon its expiration.
>
> You and Local 509 may feel free to act accordingly.

Respondent's three projectionists, Gene Bondeson, Carl Anderson, and Forrest Olson worked until the end of June. At that time, Leroy Wendling, the theatre manager, told them that the contract had run out and that they were not supposed to come to work anymore. They did not, thereafter, work at the Strand until hired about August 10 by the corporation which leased that theatre from Respondent.

The automated equipment was apparently never installed and was removed from the premises when the theatre was leased.

B. *Analysis and Conclusions*

It is patent from the foregoing uncontradicted facts that Respondent never intended to reach a collective-bargaining agreement with the Union. The "offer" which it made was one which it could not have believed stood any chance of acceptance, at least in the absence of a supported claim of economic necessity. When the Union sought evidence of such necessity and offered to cooperate if the employer's plight was real, the employer failed to respond. Then, when the Union made its counter-offer, Respondent abruptly broke off negotiations and terminated the relationship, with no justification offered.

Indeed, it appears from Respondent's conduct that its goal was to provoke a strike, rather than achieve an agreement. No other conclusion so readily suggests itself from the obviously unacceptable nature of Respondent's "offer," the abrupt termination of negotiations, the severing of the collective-bargaining relationship, Tigue's suggestion that "Local 509 may feel free to act accordingly," and the lockout or termination of the employees when they indicated, by their continued presence, that they intended to work rather than strike.

By all of the foregoing, and by its failure to comply with the obligations of Section 8(d) of the Act, I find and conclude that Respondent has violated Section 8(a)(5) and (1) of the Act.

Additionally, whether the termination of the employment of the projectionists is deemed a lockout or a discharge, it was violative of Section 8(a)(3) and (1) of the Act. If a lockout, it was without satisfaction of Respondent's Section 8(d) obligations and was in support of Respondent's bad-faith bargaining position. If the employees were considered discharged, then the discharges must be deemed unlawful because they were motivated by the employees' intention to remain represented by the Union.[7] Accordingly, I conclude that Respondent has violated Section 8(a)(3) of the Act by locking out or discharging Gene Bondeson, Carl Anderson and Forrest Olson.

The complaint alleged Leroy Wendling as a party Respondent and he was so named in the charge. That charge, however, refers to the "employer" in the singular and does not suggest Wendling, individually, was regarded as an employer separate and apart from his position as manager of the Strand Theatre. Moreover, I note from the General Counsel's formal exhibits that Wendling was never separately served with either the charge or the complaint. I therefore conclude that it was not intended that Wendling be charged in any capacity other than that of Respondent's manager. Accordingly, I shall recommend that the complaint against Leroy Wendling as an individual be dismissed. *H.S. Brooks Electric, Inc.*, 233 NLRB No. 122 (1977); *Darlington Manufacturing Company*, 139 NLRB 241, 261-262 (1962). Compare, *Certified Building Products, Inc.*, 208 NLRB 515 (1974).

III. Additional Conclusions of Law

1. All projectionist employees employed by the Respondent at the Strand Theatre in Duluth, Minnesota, excluding all other employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

[7] As the remedy is the same, I see no reason to determine whether the employees were discharged or locked out.

2. At all times material herein, the Union has been the exclusive collective-bargaining representative of the employees in the above-described unit within the meaning of Section 9(a) of the Act.

3. By failing and refusing to bargain in good faith with the Union, and by terminating the collective-bargaining relationship, Respondent has violated Section 8(a)(5) and (1) of the Act.

4. By unlawfully locking out or discharging Gene Bondeson, Carl Anderson, and Forrest Olson because of their union membership or support, Respondent has violated Section 8(a)(3) and (1) of the Act.

5. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

IV. The Remedy

It having been found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3) and (5) of the Act, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discriminatorily discharged or unlawfully locked out Gene Bondeson, Carl Anderson and Forrest Olson, I shall recommend that it be required to make them whole for any loss of earnings suffered by reason of the discrimination against them from the date of their terminations until they were rehired at the Strand Theatre by the employer which leased said theatre from Respondent. The backpay provided herein

shall be computed, with interest, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB No. 117 (1977).[8]

As Respondent has apparently retained ownership of the Strand Theatre while leasing it to another employer who continues to operate it, it remains possible that Respondent will resume operation of that theatre itself. It is therefore appropriate that Respondent be ordered to recognize and bargain with the Union, in regard to a bargaining unit consisting of its projectionist employees, in the event that it resumes operation of the Strand Theatre in Duluth, Minnesota.

As Respondent's unlawful activities, including discriminatory discharges, go "to the very heart of the Act," a broad order requiring Respondent to cease and desist from infringing *in any other manner* upon the rights guaranteed employees by Section 7 of the Act is warranted. *Pan American Exterminating Co.*, 206 NLRB 298, fn. 1 (1973); *Entwistle Manufacturing Company*, 23 NLRB 1058, enforced as modified, 120 F. 2d 532 (C.A. 4, 1941).

General Counsel sought to fix joint liability for the remedy of the foregoing unfair labor practices upon Dennis Slusher and Broadway Amusement of Duluth, Inc., whom it contended leased the theatre from Respondent and continued to operate it. While Respondent admitted that it leased the theatre to Slusher, Slusher's separate answer alleges that the theatre was leased to a corporation identified as Broadway Amusement of Duluth, Inc. No other evidence was adduced to establish a successor relationship. Accordingly, I find that the record does not warrant that

[8]See generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

an order run as against Dennis Slusher or Broadway Amusement of Duluth, Inc.[9]

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[10]

ORDER

Respondent, Edward I. Alexander d/b/a Strand Theatre, K.I.M.Y.B.A. Corp., its agents, officers, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain in good faith, upon request, with Motion Picture Operators Local 509, International Alliance of Theatrical Stage Employees, with regard to the wages, hours, and other working conditions of its employees in the appropriate collective-bargaining unit previously described.

(b) Discharging employees because of their union membership or support or unlawfully locking its employees out in support of bargaining positions taken in bad faith.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them under Section 7 of the Act.

[9]Slusher was personally present throughout the hearing and the record did establish that the present management of the Strand has reinstated the three projectionists and recognizes the Union as their representative.

[10]In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Make Gene Bondeson, Carl Anderson, and Forrest Olson whole for all losses they may have suffered because of Respondent's unlawful termination or lockout of them, in the manner set forth in the portion of this Decision entitled "The Remedy."

(b) In the event that Respondent resumes operation of the Strand Theatre in Duluth, Minnesota, recognize the Union as the collective-bargaining representative of its projectionist employees and, upon request, bargain in good faith with said Union as the exclusive representative of the employees in that unit, embodying any understanding reached in a signed agreement.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and all other reports and records necessary to determine the amount of backpay due under the terms of this Order.

(d) Mail copies of the attached notice marked "Appendix," signed by Respondent's duly authorized representative, to Gene Bondeson, Carl Anderson, and Forrest Olson, and all other persons who were employed at the Strand Theatre in June 1977.[11]

[11]In the Event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(e) Forward to Regional Director for Region 18 signed copies of said notice in sufficient numbers to be posted at the Strand Theatre, if the present management of that theatre is willing.

(f) Notify the Regional Director for Region 18, in writing within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the complaint against Leroy Wendling as an individual be dismissed.

Dated at Washington, D.C. February 7, 1978.

/s/ MICHAEL O. MILLER
Administrative Law Judge

NOTICE TO
EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge our employees because of their membership in or support for the DULUTH MOTION PICTURE OPERATORS LOCAL 509, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, or any other union, and WE WILL NOT lockout our employees in support of our bad-faith bargaining positions.

WE WILL NOT refuse to bargain in good faith with the above-named Union as the exclusive collective-bargaining representative of our projectionist employees.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

WE WILL make GENE BONDESON, CARL ANDERSON and FORREST OLSON whole for any loss of earnings suffered as a result of our discriminatory discharge or lockout of them, with interest.

WE WILL, in the event that we resume operation of the Strand Theatre in Duluth, Minnesota, recognize and bargain in good faith with the above-named Union as the exclusive collective-bargaining representative of our projectionists, upon that Union's request, and WE WILL embody any understanding reached in a written agreement.

Dated: ————.

EDWARD J. ALEXANDER d/b/a STRAND THEATER, K.I.M.Y.B.A., CORP.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 110 South 4th Street —Federal Building—Room 316—Minneapolis, Minnesota 55401—Telephone (612) 725-2604.

United States of America
Before the National Labor Relations Board

Edward J. Alexander d/b/a Strand Theatre, K.I.M.Y.B.A. Corp., Leroy Wendling

and

Duluth Motion Picture Operators Local 509, International Alliance of Theatrical Stage Employees

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Case 18-CA-5432

Decision and Order

On February 7, 1978, Administrative Law Judge Michael O. Miller issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Edward Alexander d/b/a Strand Theatre, K.I.M.Y.-B.A. Corp., Duluth, Minnesota, its agents, officers, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. May 8, 1978.

JOHN H. FENNING
Chairman
HOWARD JENKINS, JR.
Member
BETTY SOUTHARD MURPHY
Member
NATIONAL LABOR RELATIONS BOARD
(SEAL)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1629

National Labor Relations Board,

Petitioner,

vs.

Edward Alexander, d/b/a Strand Theatre, K.I.M.Y.-B.A. Corp.,

Respondent.

Application for Enforcement of an Order of the National Labor Relations Board

Submitted: February 13, 1979

Filed: April 17, 1979

Before GIBSON, Chief Judge, HENLEY, Circuit Judge, and HANSON, Senior District Judge.*

GIBSON, Chief Judge.

The National Labor Relations Board petitions for enforcement of its order against Edward Alexander, doing business as Strand Theatre, K.I.M.Y.B.A. Corp. (hereinafter referred to as respondent) entered May 8, 1978, wherein the Board affirmed the rulings, findings, and conclusions of the administrative law judge and adopted his recommended order. The administrative law judge found that respondent violated section 8(a) (3), (5), and (1) of the National Labor Relations Act, 29 U.S.C. § 158(a) (3), (5), and (1) (1973), by terminating the collective bargaining relationship, refusing to bargain in good faith, and unlawfully locking out or discharging employees because of their union membership or support. The administrative law judge recommended ordering respondent to cease and desist from engaging in unfair labor practices in violation of section 8(a) (3), (5), and (1) and to take certain affirmative action including making employees whole for losses and recognizing and bargaining with the representative union.

Respondent resists enforcement solely on the ground that the Board improperly asserted jurisdiction; he does not contest the Board's findings of substantive violations of section 8(a) (3), (5), and (1) or the appropriateness of the ordered remedy.

*The Honorable William C. Hanson, Senior United States District Judge, Southern District of Iowa, sitting by designation

Respondent is and has been engaged in the operation of motion picture theatres in the state of Minnesota, and operated a motion picture theatre in Duluth, Minnesota, under the trade name Strand Theatre and K.I.M.Y.B.A. Corp., which is the facility involved in the unfair labor practice charges. Respondent refused to either admit or deny most of the jurisdictional allegations of the Board's complaint.[1] His basis for this refusal was the privilege against compulsory self-incrimination provided by the fifth amendment of the United States Constitution. On the same basis, Edward Alexander refused to comply with a subpoena duces tecum issued by the Board requesting jurisdictional information and refused to testify regarding that subject before the administrative law judge. The Duluth theatre features X-rated films and respondent sought to avoid providing information that might be used in a potential obscenity prosecution.[2]

Since respondent declined to provide jurisdictional evidence, the Board presented the administrative law judge with secondary evidence establishing respondent's involvement in interstate commerce. The parties do not dispute the Board's conclusion that the respondent engaged in sufficient interstate activity affecting commerce

[1]The complaint stated in part:

(c) During the year ending December 31, 1976, which period is representative of its operations during all times material herein, the Respondent, in the course and conduct of its business operations, purchased and caused to be transported and delivered to its business operations, goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its business operations located within the State of Minnesota directly from points located outside the State of Minnesota.

(d) The Respondent is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

[2]The interstate transportation of obscene matter is an essential ingredient of some federal obscenity offenses. 18 U.S.C. §§ 1462 and 1465.

to meet the requirements for statutory jurisdiction over him,[3] as contrasted with the requirements of the Board's self-imposed jurisdictional standard, which requires an annual gross volume of business of at least $500,000. *Motion Picture Machine Operators Local Union 330, AFL-CIO (Western Hills Theatres, Inc.)*, 204 N.L.R.B. 1057 (1973). Nor does either party maintain that the Board's evidence supplied a sufficient basis to meet the Board's discretionary jurisdictional standard for motion picture theatres.[4]

The Board disregarded its discretionary jurisdictional standards on the basis of a policy first articulated in *Tropicana Products, Inc.*, 122 N.L.R.B. 121 (1958). In *Tropicana*, the Board asserted jurisdiction, stating:

> The Board has determined that it best effectuates the policies of the Act, and promotes the prompt handling of cases, to assert jurisdiction in any case in which an employer has refused, upon reasonable request by Board agents, to provide the Board or its agents with information relevant to the Board's jurisdictional determinations, where the record developed at a hearing, duly noticed, scheduled and held, demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the Employer's operations satisfy the Board's jurisdictional standards.

122 N.L.R.B. at 123.

Respondent argues that the *Tropicana* doctrine should not apply when the employer's refusal to provide jurisdictional information is premised upon the privilege against compulsory self-incrimination because the application of the doctrine in this situation would inflict a substantial penalty on respondent because he chose to exercise his fifth amendment rights. This argument misconstrues the basis for applying the *Tropicana* doctrine and incorrectly characterizes an order imposed to remedy unfair labor practices as a penalty addressed to the exercise of a constitutional right.

The Board asserted jurisdiction pursuant to an established policy which is totally unrelated to the fifth amendment privilege against compulsory self-incrimination. This policy serves the objectives of the National Labor Relations Act by permitting the Board to conserve its resources when undertaking to meet its burden of proving jurisdiction and is consistent with the basic reasons for adopting the discretionary jurisdictional standards. As the Board stated in *Tropicana*, 122 N.L.R.B. at 123:

> These standards were adopted by the Board, *inter alia*, as an administrative aid to facilitate its jurisdictional determinations in order that it might reduce the amount of time and energy expended in the investigation of jurisdictional questions, so that it might concentrate its energies on substantive issues in the many important cases coming before it and

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[3]The National Labor Relations Act vests the Board with "the fullest *jurisdictional* breadth constitutionally permissible under the Commerce Clause." *NLRB v. Reliance Fuel Oil Corp.*, 371 U.S. 224, 226 (1963). *See also Polish National Alliance v. NLRB*, 322 U.S. 643, 646-48 (1944); *NLRB v. Erlich's 814, Inc.*, 577 F.2d 68, 70 (8th Cir. 1978); 29 U.S.C. §§ 160(a) 152(6) and (7).

[4]Respondent denied the allegation in the complaint stating:

> (b) During calendar year 1976, which period is representative of its operations during all times material herein, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $500,000.

He refused, however, to provide any information regarding the gross volume of business and the record lacks any evidence on this subject.

thus increase its case-handling capacity. The adoption of such standards in no way precludes the Board from exercising its statutory authority, in any properly filed case, where legal jurisdiction alone is proven, if the Board is satisfied that such action will best effectuate the policies of the Act.

The purpose of the *Tropicana* doctrine is to avoid delay in processing cases and to channel resources toward investigating and remedying substantive labor law violations. While establishing the doctrine may have encouraged employers voluntarily to provide information regarding jurisdiction, the effect of applying the doctrine in any particular case is merely to expedite the processing of that case and minimize the resources expended to meet the Board's burden of asserting jurisdiction.

The Board is not bound by its self-imposed guidelines, and even when it disregards these guidelines on simply an *ad hoc* basis, the courts should not intervene unless compelled to do so by extraordinary circumstances or to correct an abuse of discretion. *NLRB v. Erlich's 814, Inc.*, 577 F.2d 68, 71 (8th Cir. 1978); *NLRB v. Timberland and Packing Corp.*, 550 F.2d 500, 501 (9th Cir. 1977), *cert. denied*, 434 U.S. 922 (1978); *Glen Manor Home for Jewish Aged v. NLRB*, 474 F.2d 1145, 1149 (6th Cir.), *cert. denied*, 414 U.S. 826 (1973); *NLRB v. Okla-Inn*, 488 F.2d 498, 500 (10th Cir. 1973); *NLRB v. City & County Electric Sanitary Sewer Service, Inc.*, 467 F.2d 209 (8th Cir. 1972); *NLRB v. Marinor Inns, Inc.*, 445 F.2d 538, 541 (5th Cir. 1971); *NLRB v. Carpenters Local No. 2133*, 356 F.2d 464 (9th Cir. 1966).

In the instant case, the union representing respondent's employees filed an unfair labor practice charge with the

Board. The Board, after preliminary investigation, issued a complaint that contained allegations designed to provide a basis for jurisdiction. When respondent failed to admit or deny these allegations, or provide information relating to them, the Board was called upon to establish jurisdiction. It met this burden by following an established policy to investigate only to the extent necessary to present evidence of statutory jurisdiction. By proceeding according to this established practice, the Board provided uniform treatment to employees charged with unfair labor practices and avoided drawing inferences from the exercise of the privilege against compulsory self-incrimination regarding the underlying facts which respondent chose not to divulge.

The cases cited by respondent are inapposite. In *Lefkowitz v. Cunningham*, 431 U.S. 801 (1977), *Lefkowitz v. Turley*, 414 U.S. 70 (1973), *Gardner v. Broderick*, 392 U.S. 273 (1968), *Uniformed Sanitation Men Assn., Inc. v. Commissioner of Sanitation*, 392 U.S. 280 (1968), and *Garrity v. New Jersey*, 385 U.S. 493 (1967), the persons asserting the privilege against compulsory self-incrimination faced rules designed to coerce them to waive their constitutional privilege. If they refused to waive this privilege, the law subjected them to a severe and substantial penalty, generally in the form of forfeiture of employment. These rules were formulated specifically to compel persons to waive their constitutional rights and imposed severe sanctions directly in response to the exercise of the constitutional right. The Supreme Court has indicated that the *Garrity-Lefkowitz* decisions apply narrowly to situations "where refusal to submit to interrogation and to waive the Fifth Amendment privilege, standing alone and without regard to other evidence, resulted in loss of em-

ployment or opportunity to contract with the State." *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1975). They do not apply when the facts do "not smack of an invalid attempt * * * to compel testimony without granting immunity or to penalize the exercise of the privilege." *Id.* In the instant case, the Board's *Tropicana* doctrine is unrelated to the privilege against compulsory self-incrimination, and respondent has not been penalized for his exercise of his fifth amendment privilege.

Respondent argues that the sanctions imposed by the Board constitute a penalty exacted because of his exercise of his fifth amendment privilege. The sanctions, however, do not relate to the exercise of the privilege against compulsory self-incrimination, but seek to remedy unfair labor practices found to have been committed by respondent, which finding he does not contest. The sanctions respondent refers to include making employees whole for losses they may have suffered because of their unlawful termination, refraining from discharging employees, posting notices admitting that respondent violated the National Labor Relations Act, and being compelled to bargain with the representative union. The administrative law judge formulated these remedies to deal with a labor problem, and the order itself reflects careful tailoring to meet respondent's unfair labor practices.

Respondent also seems to contend that the Board was obligated to follow the procedures to compel testimony outlined in 29 C.F.R. § 102.31[5] rather than present evi-

[5]29 C.F.R. § 102.31 provides in pertinent part:

> (c) With the approval of the Attorney General of the United States, the Board may issue an order requiring any individual to give testimony or provide other information at any proceeding before the Board if, in the judgment of the Board, (1) the testimony or other information from such individual may be necessary to the public interest, and (2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self incrimination.

dence to establish statutory jurisdiction. This argument is meritless. The section clearly contemplates the exercise of Board discretion and the Board is not obligated to compel testimony whenever a party relies upon his fifth amendment privilege and thereby automatically immunize the party from subsequent criminal prosecution.

The Board determined that the assertion of jurisdiction in this case "will best effectuate the policies of the Act and promote the prompt handling of cases." The Board did not abuse its discretion in disregarding its self-imposed guidelines pursuant to its policy and practice established in *Tropicana*. Accordingly, we hold that the Board's assertion of jurisdiction was proper and grant enforcement of its order.

Order enforced.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES OF AMERICA
Before the National Labor Relations Board
Eighteenth Region

Edward J. Alexander d/b/a Strand Theater, K.I.M.Y.-B.A. Corp., LeRoy Wendling,

and

Duluth Motion Picture Operators Local 509, International Alliance of Theatrical Stage Employees.

Joint Answer of Respondents

Case No. 18-CA-5432

The above-named Respondents, for their answer to the complaint in the above-entitled matter hereby assert and allege the following:

1. Admit the allegations contained in Paragraph 1.

2. (a) Admit the allegations that the Strand Theater is located within the City of Duluth. Deny the remainder of the allegations contained in Paragraph 2 (a).

(b) Deny the allegations contained in Paragraph 2(b).

(c) Refuse to admit or deny the allegations contained in Paragraph 2(c), on the ground that to admit or deny said allegations may tend to incriminate Respondents, and violate their rights under the Fifth Amendment to the United States Constitution.

(d) Other than the denial contained in Paragraph 2 (a), *supra,* Respondents refuse to admit or deny

the allegations contained in 2(d) of the Complaint, on the ground that to admit or deny said allegations would tend to incriminate Respondents under the Fifth Amendment to the United States Constitution.

3. Admit the allegation contained in Paragraph 3.

4. (a) Deny the allegations contained in Paragraph 4 (a) of the Complaint.

(b) Admit that on or about August 16, 1977, Respondent Edward J. Alexander leased the Strand Theater to Dennis Slusher, and further admit that said Dennis Slusher has continued the same operation, under the same name, with the same equipment. Respondents deny that said Dennis Slusher has continued to use the same employees, and further allege that said Dennis Slusher has reached a satisfactory agreement with members of the charging party and further deny that either Respondents or said Dennis Slusher has engaged in any unfair labor practices.

5. (a) Admit the allegations contained in Paragraph 5 (a) of the Complaint.

(b) Deny the allegations contained in Paragraph 5(b) of the Complaint, and affirmatively allege that the conduct complained of took place as a result of Respondents' decision, within the perogative of management, to make use of automated equipment rendering the services of projectionists no longer necessary.

6. Admit the allegations contained in Paragraph 6 of the Complaint.

7. Admit the allegations contained in Paragraph 7.

8. Admit the allegations contained in Paragraph 8, but deny that Respondents have in any way refused such requests to bargain by the union.

9. Deny that Respondents did or continue to refuse to bargain collectively with the union as the exclusive bargaining agent, and further

(a) Deny the allegation contained in Paragraph 9 (a) of the Complaint.

(b) Deny the allegations contained in Paragraph 9 (b).

(c) Admit that no notice of an intention to walk out was given pursuant to §8(d) of the National Labor Relations Act. However, Respondents affirmatively allege that no such notice was necessary, in light of the fact that on or about May 26, 1977, the union affirmatively gave notice of an intention to strike Respondents and granted such notice required under the Act in June of 1977.

10. Deny the allegations contained in Paragraph 10 of the Complaint.

11. Deny the allegations contained in Paragraph 11 of the Complaint.

12. Deny the allegations contained in Paragraph 12 of the Complaint.

13. Refuse to admit or deny the allegations contained in Paragraph 13 of the Complaint, on the grounds that to admit or deny said allegations would tend to incriminate Respondents, in violation of their rights under the Fifth Amendment to the United States Constitution.

WHEREFORE, Respondents pray that the complaint against them be dismissed in its entirety.

Dated: September 15, 1977.

EDWARD J. ALEXANDER
LeROY WENDLING

No. 79-211

In the Supreme Court of the United States

OCTOBER TERM, 1978

EDWARD J. ALEXANDER, D/B/A STRAND THEATER, K.I.M.Y.B.A. CORP., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

JOHN S. IRVING
General Counsel
National Labor Relations Board
Washington, D.C. 20570

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 79-211

EDWARD J. ALEXANDER, D/B/A STRAND THEATER,
K.I.M.Y.B.A. CORP., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

The petition for a writ of certiorari was not timely filed. The judgment of the court of appeals (App., *infra*) was entered on May 9, 1979. Under 28 U.S.C. 2101(c), the petition for a writ of certiorari was due to be filed within 90 days after the entry of judgment, *i.e.*, by August 7, 1979. The petition was not filed, however, until August 9, 1979 (a Thursday). No extension of time was sought. The time limit specified by 28 U.S.C. 2101(c) is jurisdictional. *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U.S. 399, 417-418 (1923).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JOHN S. IRVING
General Counsel
National Labor Relations Board

SEPTEMBER 1979

DOJ-1979-09

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

v.

EDWARD ALEXANDER, d/b/a STRAND
THEATRE, K.I.M.Y.B.A., CORP.,

Respondent.

No. 78-1629

JUDGMENT

Before: GIBSON, Chief Judge, HENLEY, Circuit Judge, and HANSON, Senior District Judge.*

THIS CAUSE came on to be heard upon an application of the National Labor Relations Board for enforcement of an order issued by it against Respondent Edward Alexander, d/b/a Strand Theatre, K.I.M.Y.B.A., Corp., Duluth, Minnesota, its agents, officers, successors, and assigns, on May 8, 1978. The Court, heard argument of respective counsel on February 18, 1979, and has considered the briefs and transcript of record filed in this cause. On April 17, 1979, the Court being fully advised in the premises, handed down its opinion granting enforcement of the Board's Order. In Conformity therewith it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Eighth Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and the Respondent, Edward Alexander, d/b/a Strand Theatre, K.I.M.Y.B.A., Corp., Duluth, Minnesota, its agents, officers, successors, and assigns, abide by and perform the directions of the Board in said order contained.

(See attached sheet for cost information.)

ENTERED: May 9, 1979

A true copy

Attest:

Robert C. Tucker
Clerk, U.S. Court of Appeals, 8th Circuit

June 4, 1979.

TAXATION OF COSTS IN CASE NO. 78-1629:

COSTS TAXED IN FAVOR OF PETITIONER:

Costs of preparation of record and brief:	$66.28
Total costs of Petitioner for recovery from Respondent:	$66.28